

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANGELITO C MERCADO,)	
)	
Plaintiff,)	
)	
v.)	No. 1:18-cv-03610-TWP-DLP
)	
MICHAEL PERSON Dr.,)	
)	
Defendant.)	

ORDER SCREENING COMPLAINT AND DIRECTING FURTHER PROCEEDINGS

I. SCREENING COMPLAINT

A. Screening Standard

Plaintiff Angelito Mercado is a prisoner currently incarcerated at Bartholomew County Jail. Because Mercado is a “prisoner” as defined by 28 U.S.C. § 1915(h), the complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). Pursuant to this statute, “[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief.” *Jones v. Bock*, 127 S. Ct. 910, 921 (2007). To survive a motion to dismiss, the complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quotations omitted). *Pro se* complaints such as that filed by the plaintiff are construed liberally and held “to a less stringent standard than formal pleadings drafted by lawyers.” *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015) (internal quotation omitted).

B. The Complaint

In his complaint, Mercado sues Dr. Michael Person (“Dr. Person”) for deliberate indifference to his serious medical needs, racial discrimination, and intentional infliction of emotional distress. Dkt. 1-1. Mercado alleges that on September 26, 2018, because he had missed his dose in the morning for the second time in 6 months, Dr. Person took away his Thorazine medication. Thorazine is an anti-psychotic medication for mental health treatment. Mercado alleges that other inmates of a different race have been allowed to miss their medication numerous times without loss of their medication. Mercado requests \$25,000 and other monetary damages.

C. Discussion of Claims

Mercado’s allegations support a reasonable inference that Dr. Person was deliberately indifferent to Mercado’s serious mental health needs. Accordingly, this action **shall proceed** with claims pursuant to 42 U.S.C. § 1983 that Dr. Person was deliberately indifferent to Mercado’s serious medical needs in violation of the Fourteenth Amendment.¹ His state law claim of intentional infliction of emotion distress against Dr. Person **shall also proceed**.

His Fourteenth Amendment² Equal Protection claim against Dr. Person is **dismissed for failure to state a claim upon which relief can be granted** because no facts are alleged that would support his claims that he has been discriminated against based on his race.

¹ Mercado is currently a pretrial detainee and not a convicted prisoner. This is relevant because Mercado’s constitutional rights as a pretrial detainee are derived from the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment, which is applicable to convicted prisoners. *See, e.g., Kingsley v. Hendrickson*, ___ U.S. ___, 135 S.Ct. 2466, 2475 (2015); *Budd v. Motley*, 711 F.3d 840, 842 (7th Cir. 2013). The Seventh Circuit recently clarified that a pretrial detainee’s medical care claim is subject only to the objective unreasonableness inquiry identified in *Kingsley*. *Miranda v. County of Lake*, No. 17-1603, 2018 U.S. App. LEXIS 22229, at *30 (7th Cir. Aug. 10, 2018).

² Mercado alleges a claim of “racial discrimination.” Dkt. 1-1 at 2. The Court construes this as an equal protection claim under the Fourteenth Amendment.

II. DIRECTING RESPONSE

Dr. Person has **until December 14, 2018**, to file an Answer or other responsive pleading to the complaint.

III. SUMMARY OF CLAIMS AND ACTIONS TAKEN

The claims remaining in this case are Mercado's:

- Fourteenth Amendment deliberately indifference claim against Dr. Person; and
- Indiana state law claim of intentional infliction of emotional distress against Dr. Person.

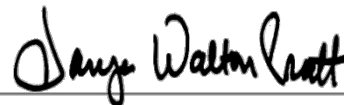
The Court has additionally taken or directed the following actions:

(1) Mercado's claim of racial discrimination is dismissed for failure to state a claim upon which relief can be granted; and

(2) Dr. Person has **until December 14, 2018**, to file an Answer or other responsive pleading to the complaint.

SO ORDERED.

Date: 11/27/2018



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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